IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5975 OF 2007

Surendra D.Vaidya.... Petitioner

versus

Smt. Geeta S. Vaidya..... Respondent.

Shri R.R. Salvi forthe petitioner
Shri Kuldeep S. patil for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 26TH SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner is the husband whereas the respondent is the wife. The petitioner had filed Hindu Marriage Petition No.559/04 seeking dissolution of marriage by a decree of divorce. The Hindu Marriage Petition filed by the husband came to be decreed on 3-3-2007. The respondent wife has also filed a Marriage Petition bearing No.30/04 praying a decree for restitution of conjugal rights, wherein the respondent by filing a written statement has justified his action on the ground that the wife has meted out the petitioner with cruel treatment. After passing of the decree in favour of the husband, dissolving the

marriage by decree of divorce, the petitioner filed an application under section 11 of CPC in the Marriage Petition filed by the wife for restitution of conjugal right. The learned counsel for the respondent herein submits that the decree passed by Family Court, Bandra in favour of the husband has been challenged by filing an appeal by the wife and the appeal is pending.

3. The trial court has held that the application under section 11 of CPC will be considered at the time of final argument and not at this stage. It is obvious that the decree for dissolution of marriage and a decree for restitution of conjugal right cannot simultaneously hold the field. Hence the application moved by the petitioner under section 11 of CPC ought to have been allowed. Both the learned advocates appearing for the respective parties in all fairness submit that the proceedings of Hindu Marriage Petition No.30/04 be stayed till the decision of the appeal filed by the respondent wife challenging the decree of divorce granted in favour of the respondent on the ground of cruelty. Thus allowing the writ petition, i grant stay to the proceedings in Hindu Marriage Petition No.30/04 till the decision of the Family Court Appeal St. No. 18472/07. The impugned order is thus quashed and set aside. Rule made absolute in above terms.

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